

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

_____)	
In the Matter of:)	
_____)	
Green Island Café/Heaven and Hell, Inc.)	License Number: 74503
t/a Green Island Café/Heaven and Hell)	Case Numbers: 08-CMP-00082(a)
_____)	
09-CC-00387	
_____)	
10-CMP-00054	
_____)	
10-251-00028	
Holder of a Retailer's Class CT License)	Order Number: 2010-516
at premises)	
2327 18 th Street, N.W.)	
Washington, D.C. 20009)	
_____)	

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Calvin Nophlin, Member
Michael Silverstein, Member

ALSO PRESENT: Manny Empras, Esq.
Green Island Café/Heaven and Hell, Inc.

Walter Adams, Assistant Attorney General,
Office of the Attorney General, District of Columbia

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER ON OFFER IN COMPROMISE

On December 12, 2009, the Alcoholic Beverage Control Board (Board) served a Notice of Status Hearing and Show Cause Hearing (Notice), for Case No. 08-CMP-00082(a), dated December 12, 2009, on Green Island Café/Heaven and Hell, Inc. t/a Green Island Café/Heaven and Hell (Respondent), at premises 2327 18th Street, N.W., Washington, D.C., charging the Respondent with the following violations:

- Charge I: The Respondent failed or refused to allow ABRA Investigators to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interfered with an investigation, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (5) (2001).
- Charge II: The Respondent failed or refused to allow ABRA Investigators to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interfered with an investigation, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (5) (2001).
- Charge III: The Respondent failed or refused to allow ABRA Investigators to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interfered with an investigation, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (5) (2001).
- Charge IV: The Respondent made a false or misleading statement to the Board with respect to a material fact in violation of D.C. Official Code § 25-766 (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2001).
- Charge V: The Respondent violated Paragraph 4.2 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which requires you to provide drawings of the rooftop enclosure to the Lofts for review and comment, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (6) (2001).
- Charge VI: The Respondent violated Paragraph 4.2 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which requires you to employ an acoustical engineer(s) certified by the Institute of Noise Control Engineers and licensed architect to design the rear deck enclosure, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (6) (2001).
- Charge VII: The Respondent violated Paragraph 4.2 of the Voluntary Agreement, as approved by the Board on July 31, 2008; which requires you apply for permits and other appropriate approvals to complete the rear deck enclosure within ninety (90) days of the final execution of the Voluntary Agreement, to diligently pursue finalization of permits and approvals, and to complete the rear deck enclosure within six (6) months of obtaining proper permits and approvals, for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (6) (2001).

Charge VIII: The Respondent made substantial changes in operation without the approval of the Board in violation of D.C Official Code § 25-762 (b) (7) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2001).

On June 23, 2010, the Board) served a second Notice of Status Hearing and Show Cause Hearing on the Respondent, dated June 6, 2010, for Case No. 09-CC-00387, Case No. 10-251-00028, and Case No. 10-CMP-00054, charging the Respondent with the additional following violations:

Charge I: The Respondent allowed the consumption of alcoholic beverages by persons under the age of twenty-one (21) years in violation of D.C. Official Code § 25-781 (b) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (1) (2001).

Charge II: The Respondent violated Paragraph 1.1 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which prohibits the admission of any person under the age of 21 years, for which the Board may take the proposed action pursuant to D.C. Official Code §§ 25-446 (e) and 25-823 (6) (2001).

Charge III: The Respondent allowed the licensed establishment to be used for an unlawful or disorderly purpose for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823 (2) (2001).

Charge IV: The Respondent allowed the consumption of alcoholic beverages by persons under the age of twenty-one (21) years in violation of D.C. Official Code § 25-781 (b) (2001), for which the Board may take the proposed action pursuant to D.C. Official Code § 25-823(1) (2001).

Charge V: The Respondent violated Paragraph 1.1 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which prohibits the admission of any person under the age of 21 years, for which the Board may take the proposed action pursuant to D.C. Official Code §§ 25-446 (e) and 25-823 (6) (2001).

Charge VI: The Respondent violated Paragraph 1.2 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which requires all servers of alcoholic beverages to undergo Alcohol Awareness Training, for which the Board may take the proposed action pursuant to D.C. Official Code §§ 25-446 (e) and 823 (6) (2001).

Charge VII: The Respondent violated Paragraph 1.3 of the Voluntary Agreement, as approved by the Board on July 31, 2008, which requires an ABC Manager with Alcohol Awareness Training to be present and responsible for any floor under operation, for which the Board may take the proposed action pursuant to D.C. Official Code §§ 25-446 (e) and 823 (6) (2001).

The two Notices were consolidated for hearing purposes and the matter came before the Board for a Show Cause Hearing on October 20, 2010. At that time the Office of the Attorney General for the District of Columbia (the Government) proposed, pursuant to 23 DCMR 1604.5 (2008) and the Respondent accepted, an Offer in Compromise in order to resolve the numerous charges pending against the Respondent.

On October 20, 2010, the Board voted five to one, in favor of accepting the Offer in Compromise to resolve the Charges listed in both Notices against the Respondent and reduces the terms of such to writing as follows:

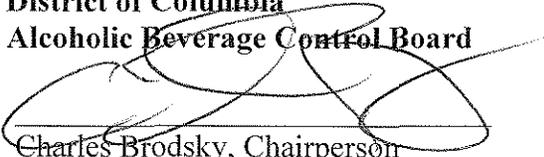
1. The Government dismisses Charge III listed in the Notice dated June 6, 2010.
2. The Respondent shall pay civil penalties in the amount of \$17,000.00 by no later than March 31, 2011. Failure to remit the amount in full within the time specified may result in the imposition of additional sanctions.
3. The Respondent shall receive a suspension of its license for 35 days, with 21 of those days stayed for one year pending no further violations and 14 days to be served. Additionally, the Respondent will serve five days of a suspension that were imposed and stayed by the Board in Order No. 2010-369 on June 23, 2010, for a total of 19 days served. The dates of suspension are November 21, 2010 through December 9, 2010, inclusive. If the Respondent fails to pay the fine within the time set forth in this Order, then the 21 stayed days will be served from April 1, 2011 through April 21, 2011, inclusive.
4. The Respondent shall make available for ABRA inspection all books, records, invoices, and delivery slips for the last three years by close of business on Friday, October 22, 2010 or the Offer in Compromise will be deemed void and the matter will proceed to a Show Cause Hearing.

ORDER

Accordingly, the Board having found the terms of the OIC to be fair, reasonable and adequate, does hereby, this 27th day of October, 2010, **APPROVE** the terms of the Offer in Compromise entered into by the Government and Green Island Café /Heaven and Hell, Inc. t/a Green Island Café /Heaven and Hell located at premises 2327 18th Street,

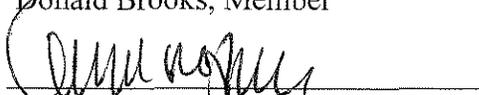
N.W., Washington, D.C. The OIC shall be carried out in accordance with the terms of the OIC and it shall be binding on the Respondent. Copies of this Order shall be sent to the Government, Respondent and Respondent's Counsel.

**District of Columbia
Alcoholic Beverage Control Board**


Charles Brodsky, Chairperson

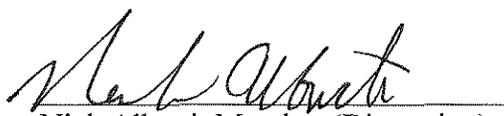

Mital Gandhi, Member


Donald Brooks, Member


Calvin Nophlin, Member


Mike Silverstein, Member

Board Member Nick Alberti dissents from the position taken by the majority of the Board and rejects the Offer in Compromise for two reasons. First, Board Member Alberti does not agree with the Board's decision to reduce the numerous enumerated charges listed above, many of which are primary tier violations, to a single charge of a primary tier violation. The reduction in charges does not accurately capture the severity or totality of the violations allegedly committed by the Respondent. Secondly, the Respondent has demonstrated ongoing defiance and contempt for this Board by repeatedly failing to comply with the statutory requirement that a licensee maintain books and records for inspection for three years pursuant to D.C. Official Code § 25-113(j)(3)(A) and 23 DCMR 1204.3 (2008). This is made abundantly clear in Board Order No. 2010-369 where the Respondent was found by a majority of this Board to have violated this provision on more than one occasion and then when ordered by the Board to produce the books and records within thirty (30) days of the Order, the Respondent again failed to comply. As such, Board Member Alberti votes against the Offer in Compromise.


Nick Alberti, Member (Dissenting)

Pursuant to Section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001) and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Alcoholic Beverage Regulation Administration



October 26, 2010

To Johnnie Jackson, Chief, Enforcement Division
Alcoholic Beverage Regulation Administration

From Adeniyi Adejunmobi, Auditor
Alcoholic Beverage Regulation Administration

Subject Green Island Café/Heaven & Hell
2327 18TH Street NW Washington, DC
ABC License # ABRA-74503

Summary:

This memorandum is in reference to the inventory of books and records performed by ABRA Auditor Adeniyi Adejunmobi of Green Island Café/Heaven & Hell located at 2327 18TH Street NW. The scope of the inventory covered the three year period from Fiscal Year 2008 through Fiscal Year 2010.

Details:

On Friday, October 22, 2010, Mehari Woldermariam, owner, Green Island Café/Heaven & Hell, located at 2327 18TH Street NW, provided ABRA's Enforcement Division with seven boxes of records for Fiscal Year 2008 through Fiscal Year 2010. ABRA Auditor Adejunmobi conducted an inventory of the documents in the boxes provided by Mehari Woldermariam. For the three year period inventoried Green Island Café/Heaven & Hell maintained books and records that included the date and quantity of the purchase, the name, address, and the phone number of the wholesaler and / or vendor with the original invoices.

Books and records for Fiscal Year 2008 contained partially maintained sales information that included the date, price of food sold, the price of alcoholic beverages sold and amount of total sales. Auditor Adejunmobi noted that the books and records for the months of November and December 2007; and March thru June 2008 were missing for Fiscal Year 2008.

Books and records for Fiscal Year 2009 contained partially maintained sales information that included the date, price of food sold, the price of alcoholic beverages sold and amount of total sales. Auditor Adejunmobi noted that books and records for the months of October, November and December 2008; and January thru February 2009 were incomplete for Fiscal Year 2009

Books and records for Fiscal Year 2010 contained partially maintained sales information that included the date, price of food sold, the price of alcoholic beverages sold and amount of total sales. Auditor Adejunmobi noted that books and records for the months of February, March, and May 2010 were incomplete for Fiscal Year 2010; and the months of June, July, and August 2010 were missing.

Other Observations:

Auditor Adejunmobi also observed that sales information that included the date, price of food sold, the price of alcoholic beverages sold and amount of total sales of another establishment Columbia Station were intermingled with the Green Island Café/Heaven & Hell documents which were inventoried.